

5. Plaintiffs deposed Defendant Dr. Deborah Akers (“Dr. Akers”). Declaration of Jeremy Dys (attached hereto).

6. In the Declaration of Dr. Akers, Dr. Akers attested to substantially the same facts she attested to during her deposition. *see* ECF No.118.

7. Defendants requested leave of Court to exceed the Reply Brief page limit set by the Southern District of West Virginia, Bluefield Division pursuant to L. R. Civ. P. 9.4., not because Defendants presented new facts and argument, but rather, in an abundance of caution in the event that Defendants’ Reply Brief was not governed by L. R. Civ. P. 7.1, and because Plaintiffs filed a 45-page Memorandum of Opposition to Defendants’ Motion to Dismiss, an excess of 25 pages. *see* ECF No. 113.

8. None of the arguments or evidence Defendants raise in their Reply Brief can truly be considered “new,” Defendants’ arguments are substantively the same as those raised in their Motion to Dismiss, including those Defendants assert in response to Plaintiffs’ opposition arguments, and Plaintiffs have been afforded ample opportunity to rebut Defendants’ arguments. *see* ECF No. 118; *EEOC v. Freeman*, 961 F. Supp. 2d 783, 801 (D. Md. 2013) (“[Plaintiff] did not lack a chance to respond to many of the arguments that it points to now; it simply squandered its chance, and cannot now claim prejudice); *Clear Channel Outdoor, Inc. v. Mayor of Baltimore*, 22 F. Supp. 3d 519, 529 (D. Md. 2014) (“[Defendant] raises no new or novel issue prompting the Court to permit a surreply, and thus [Plaintiff’s] motion will be denied”) .

9. Plaintiffs fail to attach to their motion a proposed sur-reply, only vaguely outlining what they hope to do, leaving the Court to assume that Plaintiffs will simply “reiterate old arguments” and “provide unsubstantiated excuses.” *EEOC v. Freeman*, 961 F. Supp. 2d at 802.

WHEREFORE, Defendants suggest that Plaintiffs' sur-reply may not be appropriate. Had Plaintiffs' counsel properly advised counsel for Defendants as to the proposed bases for the requested sur-reply, undersigned counsel would have stated our opposition. Nonetheless, thus informed, we leave it to the better judgement of this honorable Court as to whether it would benefit from yet further briefing on the pending Motion to Dismiss. Should the Court grant Plaintiffs' request for leave, Defendants hereby request the opportunity to file a brief response.

Dated: November 22, 2019

Respectfully submitted,

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